

Amendment No. 1 to SB1228

Harper
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1228*

House Bill No. 2219

by deleting all language after the enacting clause of the introduced bill and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding Sections 2 through 7 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Orphaned Information Technology Recovery Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(a)

(1) "Collect" or "collection" means to physically pick up a covered device at a household or to facilitate the drop-off of a covered device at a collection site included in the manufacturer's plan, and to transport the covered device for recovery;

(2) "Consumer" means any occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit (a household) who has used a covered device primarily for personal or home business use;

(3) "Covered device" means any computing, display or printing device, including a desktop or notebook computer, computer monitor, portable computer, printer and inkjet printer; but does not include a television (including a cathode ray tube or flatpanel based television), a part of a motor vehicle, a personal digital assistant (PDA), or a telephone;

(4) "Department" means the department of environment and conservation;

(5) "Manufacturer" means any person who:

(A) manufactures or manufactured covered devices under its own

brand for sale;

(B) manufactures or manufactured covered devices for sale in this state without affixing a brand;

(C) resells or resold in this state covered devices produced by other suppliers under its own brand or label;

(D) imports or exports or imported or exported covered devices into the United States; however, if a company from whom an importer purchases the merchandise has a presence in the United States and/or assets, that company shall be deemed to be the manufacturer; or

(E) manufactures or manufactured covered devices, supplies or supplied them to any person or persons within a distribution network that includes wholesalers or retailers in this state, and benefits or benefited from the sale of those covered devices through that distribution network;

(6) "Manufacturer's brands" means a manufacturer's name, brand name or brand logo, and all manufacturer's names, brand names and brand logos for which the manufacturer has legal responsibility, including those names, brand names, and brand logos of companies that the manufacturer has acquired;

(7) "Person" means any individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or public authority;

(8) "Personal digital assistant" means a hand-held computing device with a screen size of four inches or less;

(9) "Recover" means to reuse, recycle, or dispose; and "recoverer" means a person or entity that reuses, recycles, or disposes;

(10) "Retail sales" means sales of products through sales outlets, via the Internet, mail order or any other means, whether or not the seller has a physical presence in this state. Sales include sales of new, used, refurbished and other

products;

(11) "Retailer" means a person who owns or operates a business that sells covered devices to a consumer, including through sales outlets, catalogs or the Internet, whether or not the seller has a physical presence in this state;

(12) "Sell" or "sale" means any transfer for consideration of title including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not mean leases;

(13) "Telephone" means an instrument utilized by a consumer to transmit and receive voice messages by a public utility and cellular radio telephone instruments; and

(14) "Television" means any telecommunication system device that can broadcast and receive moving pictures and sound over a distance, and includes a TV tuner. Display devices that are peripheral to a computer but nevertheless contain a TV tuner are considered televisions.

(b) A covered device is "orphaned" under this part if the manufacturer of that covered device no longer manufactures or sells covered devices or does not have a specified recovery plan for such covered device.

SECTION 4. Any person who submits a bid or proposal for a contract with a state agency for the purchase or lease of covered devices must be in compliance with the provisions of Tennessee Code Annotated, title 12.

SECTION 5. In considering bids or proposals for state contracts for covered devices, in addition to any other preferences provided elsewhere under state law, the state shall give special preference to manufacturers that have programs to collect and recover covered devices that are orphaned, including but not limited to collection events, recycling grants, and manufacturer initiatives to take back any covered device brand with purchase.

SECTION 6. The department of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures

Act, compiled in title 4, chapter 5.

SECTION 7. The department of general services is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. This act shall take effect January 1, 2008, the public welfare requiring it.